

Re: FW: CPRA request (DCA.2018.01.14.a)

From: [REDACTED]
To: [Criswell, Tiffany@DCA <Tiffany.Criswell@dca.ca.gov>](mailto:Criswell,Tiffany@DCA<Tiffany.Criswell@dca.ca.gov>)
Subject: Re: FW: CPRA request (DCA.2018.01.14.a)
Date: Friday, February 16, 2018 10:20 AM
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Dear Ms. Criswell,

Thanks for your thoughtful answer. I'm familiar with the statutes, but the problem is that they seem to me to imply the opposite of the conclusion you all seem to have reached from them.

I am only interested in business improvement districts here. These are authorized under the Streets and Highways Code at section 36600 et seq. In particular, section 36601(c) states explicitly that one of the purposes of BIDs is to fund improvements:

"It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements."

Obviously if a BID is formed by a municipality, these improvements will be municipal improvements.

Furthermore, section 36622(n) requires the formation of a BID to be justified in part by an engineer's report:

"In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan."

Thus the section of the Business and Professions Code that you cite, 6731(e), says in pertinent part that "Civil engineering embraces the following studies ... in connection with ... municipal improvements ... : The preparation of ... engineering reports."

And, as I said, the Streets and Highways code defines the purpose of a BID to be in part to provide municipal improvements.

Thus when your agency somehow decided, although not in writing, that the engineering reports that go along with Prop. 218 related projects do not constitute the practice of engineering, I think that you're already engaged in "creating underground regulation." There's an explicit statement in the law that says to me that they do constitute the practice, and yet your investigators assume that they do not.

Furthermore, the practice of civil engineering isn't defined only at section 6731 of the BPC. It's also defined at section 6734, which says in whole: "Any person practices civil engineering when he professes to be a civil engineer or is in responsible charge of civil engineering work."

Since the civil engineers who prepare these engineering reports universally profess to be civil engineers when doing the work, are paid as civil engineers, and adorn the finished reports with their state-authorized seals stating that they're civil engineers, it's hard to imagine that they're not professing to be civil engineers and, therefore according to section 6734, are practicing civil engineering regardless of how one interprets section 6731.

Anyway, that's why I think that the law dictates that you all ought to adopt a policy that says that, in fact, the preparation of Prop 218 reports, if only with respect to business improvement districts, does in fact constitute the practice of civil engineering according to the letter of the existing law.

This isn't just an abstract exercise, by the way. These BIDs can be quite harmful, and some of the engineers' reports that support their formation are stupidly deficient with respect to professional standards. I've read such reports which, e.g., calculate the standard deviation of a dataset according to a completely wrong formula, which reach contradictory conclusions from the same data at different places in the report with both justified by statements like "Based on my X years of experience as a civil engineer," and so on. The BIDs that are formed based on these reports are then nearly impossible to eliminate even though are often based on delusional statements by engineers, who aren't subject to any professional regulation.

Finally, I'm not sure how Boards work on the state level, but isn't the determination of how the guiding statutes are to be implemented in terms of policy a question for the Board rather than for the enforcement staff? If so, and given that there's at least a plausible argument for a conclusion opposite to the one you all have reached, shouldn't there be a way for me to submit this to the Board for deliberation and decision?

Thanks so much for your help,

[REDACTED]

On Fri, Feb 16, 2018, at 9:52 AM, Criswell, Tiffany@DCA wrote:

Dear [REDACTED]:

Determinations made during the review of complaint investigations as to whether or not the preparation of documents, plans, reports, etc. constitutes the regulated practices of civil, electrical, or mechanical engineering are not based on nonexistent policy. Business and Professions Code sections 6731, 6731.5, and 6731.6, respectively (see text below), define the practices, and any determination during our investigations by one or more licensed professional engineers of what constitutes these practices is based on these statutes.

There will be no policy written to further identify a practice or preparation of certain kinds of documents as professional engineering as these statutes provide for such purpose. Further, the publication of such a policy would likely be engaging in creating underground regulation, which is prohibited. However, Board Staff, independent of complaint investigations, can assist and make available the review of specific documents by a licensed engineer to determine if the preparation of them constitutes civil, electrical, or mechanical engineering.

6731. Civil engineering defined

Civil engineering embraces the following studies or activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges:

- (a) The economics of, the use and design of, materials of construction and the determination of their physical qualities.
- (b) The supervision of the construction of engineering structures.
- (c) The investigation of the laws, phenomena and forces of nature.
- (d) Appraisals or valuations.
- (e) The preparation or submission of designs, plans and specifications and engineering reports.
- (f) Coordination of the work of professional, technical, or special consultants.
- (g) Creation, preparation, or modification of electronic or computerized data in the performance of the activities described in subdivisions (a) through (f).

Civil engineering also includes city and regional planning insofar as any of the above features are concerned therein.

Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3.

[NOTE: The last registration number issued to a civil engineer registered before January 1, 1982 was 33,965.]

[REDACTED]